IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1717 of 2002
To
FIRST APPEAL No. 1723 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SPECIAL LAQ OFFICER O.N.G.C. AND ANOTHER
Versus
NARANBHAI KHODIDAS PATEL AND ANOTHER

==========

Appearance :
MR RR MARSHALL for Appellants.
NOTICE SERVED for Respondent Nos. 1 - 2.
MR AMIT C NANAVATI for Respondent No.1.
MR ND GOHIL, AGP for Respondent No.2.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/08/2006

COMMON ORAL JUDGMENT

Since common point is involved in all these appeals, all these appeals are taken up for final hearing together with the consent of

learned advocates appearing for the parties.

These appeals are directed against the judgement and order of learned 4th Joint Civil Judge (S.D.), Mahesana dated 26-11-2001, by which learned Judge has partly allowed Land Acquisition Reference Nos.217/1998 to 220/1998 and Land Acquisition Reference Nos.686/1998 to 688/1998 and granted additional amount of rent at the rate of Rs.3/- per sq.mtr. with interest at the rate of 9% from the date of possession till its realisation.

On behalf of ONGC, Mehsana, certain agricultural lands were temporarily acquired for the purpose of its project work. The land in question is situated at village Kasalpura, Taluka and District – Mehsana. The Special Land Acquisition Officer declared his award on 26-8-1988 in Land Acquisition Case No.167/1988. The Special Land Acquisition Officer fixed market value of the land at the rate of Rs.80 per Are per year. However, the claimants were not satisfied and requested the Special Land Acquisition Officer to make references. The Special Land Acquisition Officer, accordingly made various reference (seven in all) at the instance of the claimants, as according to the claimants amount should have been fixed at a higher rate. Aforesaid references were numbered as Land Acquisition Reference Nos.217 to 220/1998 and Land Reference Cases Nos.686 to 688/1998.

Learned Judge of the Reference Court thereafter treated Land Reference Case No.217/1998 as main case and after recording the evidence and considering the arguments of learned advocates, learned Judge came to the conclusion that the rent fixed by Special Land Acquisition Officer is not just and adequate. Accordingly, learned trial Judge has fixed Rs.300/- per Are, i.e., Rs.3 per sq.mtr., as yearly rent

and after deducting the amount granted by Special Land Acquisition Officer, learned Judge awarded additional amount at the rate of Rs.2.20 per sq.mtr., towards yearly rent.

Being aggrieved by the aforesaid order of the Reference Court, on behalf of ONGC, these First Appeals are filed under Section 54 read with Section 96 of the Civil Procedure Code.

Mr.Marshall, learned advocate appearing for the appellants in each of these appeals, has vehemently submitted that even though the Special Land Acquisition Officer has declared his award as back as in the year 1988, references have been made after considerable period of time. Mr.Marshall further submitted that in any case looking to the scheme of the Act, rent can be fixed only for a period of three years from taking possession of the land in question and the Court has no power to pass any order for the period subsequent to three years from the date of taking possession of the land by the acquiring body.

On the other hand, learned advocate for the respondent has tried to justify the order of the trial Court.

I have heard both the learned advocates and I have also gone through the impugned order of the Reference Court as well as the record and proceedings of the case.

It is not in dispute that on behalf of ONGC, the lands in question were sought to be acquired for a temporary period. Temporary acquisition of land is covered by Part VI of the Act containing three sections, viz. Sec. 35, 36 and 37, which read as under:-

"35.(1). Subject to the provisions of Part VII of this Act, whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the appropriate Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2). The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3). In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court".

36(1). On payment of such compensation, or on executing of such agreement on or making a reference under Section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

> (2). On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein;
>
> Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the appropriate Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.
>
> 37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

There are two State amendments so far as section 35 is concerned. The said amendments are, by section 17 of the Land Acquisition (Gujarat Unification and Amendment Act XX of 1965, in sub-section (1) of section 35 of the principal Act, the words “waste and arable” are deleted. Similarly, the Maharashtra amendment by section 10 of the Land Acquisition [Bombay amendment] Act XXXV of 1953 has been extended to the whole State of Gujarat by Gujarat Act XX of 1965. The said amendment in section 35 reads as under:

In section 35 -

(a). after sub-section (1), insert the following sub-section, namely,-

("1-A). Before issuing a direction under sub-section (1) the State Government may require the Collector to submit -

(a). a plan of the land which is needed for occupation and use; and

(b). an estimate of the compensation that would be payable under sub-section (2);

and upon the issue of such requisition the Collector shall cause public notice of the substance of the requisition to be given at convenient places in the locality in which the land is situated.

(1-B). After the issuance of such notice, it shall be lawful for any officer either generally or specially authorised by the Collector in this behalf, and for his servants and workmen to exercise the powers conferred by sub-section (2) of Section 4.

(1-C). The officer authorised under sub-section (1-B) shall at the time of his entry pay or tender payment for all necessary damage to be done as aforesaid and, in the case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final".

(b). in-sub-section (2), for the words "the Collector shall thereupon" substitute the words "upon the issue of a

direction under sub-section (1) the Collector shall".

Reading the aforesaid provisions, it is clear that temporary acquisition is permissible for a period of three years only. At the time of acquiring the land for a period of three years as envisaged under section 35 of the Act, it is open to the claimants to ask for Reference under section 35 (3) of the Act. The Court is, therefore, required to determine the fixation of compensation, either in a gross sum of money, or by monthly or other periodical payments [which is popularly known by all concerned as "rent"] in such Reference to find out whether compensation, either in a gross sum of money, or by monthly or other periodical payments fixed by Land Acquisition Officer is proper or not. Looking to the scheme of the Act, it is clear that beyond three years, the provisions of section 35 of the Act are not applicable. On the expiration of the term of temporary acquisition of three years, so far as the Collector is concerned, his duties are prescribed in Sections 36 (2) and 37 of the Acts, i.e.:

(1) make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement;
(2) restore the land to the persons interested therein; and,
(3) if there is any difference as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, refer such difference to the decision of the Court.

Considering the said provisions contained in the Act, it is clear that rent is required to be fixed by the Collector for a period of three years from the date of taking possession by the acquiring body and if the claimants have any grievance about such fixation they can ask for

reference. The scope of references, however, is limited only for determining the rent for a period of three years from the date of taking possession by the acquiring body. After aforesaid period of three years, if the acquiring body has retained the possession, the Collector has no jurisdiction to make the reference for subsequent period. While deciding the cases, the Reference Court also cannot pass any order for period subsequent to three years as the compensation for such temporary acquisition is required to be fixed only for the period of three years from the date of taking possession by the acquiring body. After the aforesaid period of three years, if the acquiring body has retained the possession, the Collector can act as per Section 36 (2) and Section 37 of the Act by fixing compensation for the purpose of damage, if at all found to have been done to the land for which there is no agreement and can restore the land to the persons interested therein and in case the Collector and persons interested differ as to the condition of the land at the expiry of the term, a reference can be made to the Court, which is entirely different reference, and in such reference, the Court is required to determine the extent of damage, if any, caused to the land by the acquiring body. However, as stated earlier, under Section 35, amount is required to be fixed by the Court in a reference only for the period of three years from the date of taking possession of the land and no amount of rent or compensation can be fixed under Section 35 for a period subsequent to the aforesaid period of three years.

Mr.Marshall submitted that after aforesaid period of three years is over, there are cases where the acquiring body has retained the possession with the consent of the land owners, and, on their own, they have also increased the rent.

In a given case, if the acquiring body has retained possession after

period of three years, such cases are to be governed by such understanding or agreement between the parties and where there is any dispute for enhancement of rent, the remedy is elsewhere but not under Land Acquisition Act. The nature of possession of the acquiring body as well as its fixation of any amount after initial period of three years is governed independently by mutual understanding or by agreement, if any, and in such eventuality if there is any dispute in connection with such agreement or with regard to compensation, it can be agitated only before the competent Civil Court. In short, land acquisition proceedings in temporary acquisition is applicable only as per the eventuality under Section 35 and 36, i.e. for determining compensation within the period of three years during which the possession has remained with acquiring body and, thereafter, the Collector can act as per Section 36 (2), both for determining compensation for any damage done to the land during the aforesaid period of three years or for restoring the possession to the interested persons. If the possession is retained beyond the period of three years by separate agreement of understanding, in such eventuality, the Collector nowhere figures in the picture so far as such arrangement or agreement for fixation of amount between the parties is concerned. As stated earlier, if the acquiring body has retained the possession by some independent understanding or agreement between the claimants and acquiring body, in such eventuality, naturally, Section 36 (2) will have no application and in future, if there is any dispute in connection with such agreement or understanding, only competent Civil Court or any other appropriate forum as available to the parties can decide it but provisions of Land Acquisition Act in such eventuality will not be applicable.

In the instant case, it seems that the award was declared in 1988 and references have been made after a considerable time. Since the

Court has not addressed itself whether the compensation is given only for initial period of three years (as this is a case of temporary acquisition), and as the learned Judge has given further direction by which the value of the land is fixed at Rs.3 per sq.mtr., with interest at the rate of 9% from the date of possession till realisation, in my view, such finding cannot be allowed to stand. Therefore, all these matters are required to be sent back for re-determination of the aforesaid question, in the light of observations made herein above and, the Court will have to decide compensation for temporary acquisition only for initial period of three years from the date of taking possession and, at that time, the Court will have to consider whether the references made are in connection with original period of three years. Accordingly, the trial Court shall decide all these references afresh by considering the provisions of Section 35 of the Land Acquisition Act.

In the result, order passed by the learned Judge of Reference Court in Land Acquisition Reference Nos.217/1998 to 220/1998 and Land Acquisition Reference Nos.686/1998 to 688/1998 is quashed and set aside and the matter is sent back to the trial Court to decide the references again. If the trial Court comes to the conclusion that the references made under Section 35 (3) of the Act are in connection with original period of three years, the Court can decide the question of compensation for that period only, but if it is found that references were made for the period beyond three years, naturally, no relief can be granted under Section 35 of the Land Acquisition Act. The trial Court shall take appropriate decision in accordance with law by keeping in mind the observations made in this judgement. The trial Court may take appropriate decision expeditiously and in any case within a period of six months from the date of receipt of writ from this Court. It is, however, clarified that this Court has not expressed any opinion about the nature

of possession of the acquiring body and as indicated earlier, if the acquiring body has retained the possession after initial period of three years, by virtue of any agreement or understanding, that will be governed separately by such agreement oral or written or even by the conduct of the parties.

Accordingly, all these appeals are allowed with no order as to costs.

Registry is directed to return record and proceedings forthwith.

(P. B. MAJMUDAR, J.)

/malek